IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.4592 OF 2005

Nalini Das. ...Petitioner.

Vs.

Life Insurance Corporation & Ors. ...Respondents.

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Mr. C. U. Singh i/b. Sanjay Udeshi for the Petitioner.
Mr.V. Y. Sanglikar for the Respondents.

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CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

August 4, 2005.

P.C.:

Rule, by consent returnable forthwith. Counsel appearing on behalf of the Respondents waives service. By consent of Counsel and at their request taken up for hearing.

2. The Petitioner was appointed as a Stenographer by the First Respondent on 16th August 1989. The Petitioner had applied for the post of Stenographer at the Udupi Divisional Office of the First Respondent in the State of Karnataka claiming to belong to the Chennadasar community which is listed as a Scheduled Caste in the Presidential notification for the State of Karnataka. The caste certificate issued to the Petitioner was cancelled by an

order passed by the Tahsildar on 9th February 1993. In a Writ Petition filed by the Petitioner, the High Court of Karnataka quashed and set aside the order of Tahsildar by a judgment dated 26th October 1998 and remitted the matter back to the Tahsildar for fresh consideration. Upon remand, the Tahsildar, Mangalore Taluka by an order dated 16th April 2001 cancelled the caste certificate issued to the Petitioner. It has been stated on behalf of the Petitioner that an appeal has been filed by the Petitioner against the order of the Tahsildar which is pending.

3. The Petitioner secured an offer of employment from SBI Life Insurance on 19th March 2005. On 1st April 2005, the Petitioner submitted a letter of resignation purporting to resign from the service of the First Respondent with effect from 3rd April 2005. Not having furnished a notice of one month, the Petitioner authorised a deduction of salary in lieu of notice for the aforesaid period. The Petitioner was informed by the Senior Divisional Officer on 1st April 2005 that the matter had been referred to a higher office within the Corporation and that the Petitioner would be informed once a decision was taken. The Petitioner handed over the keys to her office on 5th April 2005 and requested that her

dues be settled by deducting the salary in lieu of the period of notice. On 6th April 2005, the Petitioner was informed that her resignation was not accepted and by another letter also of the same day, the Senior Divisional Manager called upon the Petitioner to resume duties failing which her absence would be treated as unauthorised and would be dealt with in accordance with the Staff Regulations. The Petitioner thereupon submitted representations on 11th April 2005, 12th May 2005, 7th June 2005 and 25th June 2005 praying that she be relieved from service. By a letter dated 4th July 2005, a notice to show cause was issued to the Petitioner recording that the caste certificate on the basis of which she had obtained employment has been invalidated and calling upon her to explain as to why her appointment should not be held void ab initio and her services be not terminated by the Corporation.

4. On behalf of the Petitioner it has been submitted that under Regulation 18(1) of the Life Insurance Corporation of India (Staff) Regulations, 1960, the Petitioner has an absolute and unfettered right to resign and that there was accordingly no discretion left with the authorities to refuse to accept the resignation. Reliance has been placed on the view taken by

several High Courts in regard to Regulation 18(1) of the aforesaid Regulations to which a reference will be made shortly hereafter.

5. An affidavit in reply has been filed to the petition on behalf of the Respondents in which the factual background relating to the invalidation of the claim of the Petitioner to belong to a Scheduled Caste has been adverted to. It has been averred that the Petitioner was aware that her caste certificate was cancelled and that her appointment was liable to be treated as null and void because of the production of a false caste certificate. In support of the position of the Respondents, Counsel has urged that the appointment of the Petitioner would be void ab initio in view of the law laid down by the Supreme Court in **R.Vishwanatha Pillai vs. State of Kerala,** (2004) 2 SCC 105. Hence, it was submitted that there was no question of the Petitioner resigning from service.

6. In response to this submission, it has been stated on behalf of the Petitioner by Counsel appearing on her behalf that the Petitioner does not in any event wish to continue in the employment of the First Respondent and even if her claim of belonging to a Scheduled Caste is eventually upheld in

appropriate proceedings, the Petitioner shall not make any claim whatsoever against the First Respondent.

7. Now, in so far as the issue of resignation is concerned, Regulation 18(1) of the Life Insurance Corporation of India (Staff) Regulations, 1960 provides as follows :

> "18. (1) An employee, other than an employee on probation or an employee appointed on a temporary basis, shall not leave or discontinue his service in the Corporation without first giving notice in writing to the competent authority of his intention to leave or discontinue the service. The period of notice required shall be -
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> (a) three months in the case of an employee belonging to Class I;
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> (b) one month in the case of other employees.
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> Provided that such notice may be waived in part or in full by the competent authority at its discretion.
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> In case of breach by an employee of the

provisions of this sub-regulation, he shall be liable to pay the Corporation as compensation a sum equal to his salary for the period of notice required of him, which sum may be deducted from any moneys due to him."

Explanation 2 to the aforesaid Regulation is in the following terms:

"2. A notice given by an employee under sub-regulation (1) above shall be deemed to be proper only if he remains on duty during the period of the notice, and an employee shall not be entitled to set off any leave earned against the period of such notice."

8. Counsel appearing on behalf of the Petitioner has placed reliance on a judgment of the Andhra Pradesh High Court in **T. Purushotham Reddy v. United India Insurance Co.Ltd.** (2003 I CLR 582 where a similar Regulation came up for consideration. The Andhra Pradhesh High Court adverted inter alia to a decision of the Patna High Court involving the United India Insurance Co. Ltd. (Prathiba Thukral v. United India Insurance Co.Ltd., Writ Petition 183(SB)/99). The Andhra Pradesh High Court, after referring to several judgments of the Supreme Court, held that

the regulation in question which was pari materia did not either expressly or by necessary implication reserve or preserve a right in the employer to reject the resignation of an employee at his choice. The regulation merely incorporated a requirement of written notice by the employee with the sanction that in the event that the employee discontinued his service before the expiry of the period of notice, he would be liable to pay as compensation, a sum equal to his salary for the period of notice. In the present case, it has been urged, relying upon the aforesaid judgment of the Andhra Pradesh High Court, that the Petitioner had an absolute right to resign and that the deficiency in the period of notice would only result in the consequence of the Petitioner being liable to pay to the Corporation, compensation equal to her salary for the period of notice. The Petitioner, it was submitted, authorised the Corporation to deduct this amount from her outstanding dues. Counsel appearing on behalf of the Petitioner has also placed reliance on the judgment of one of us, Mr.Justice A.P. Shah, in **Dinshaw Jal Muncherjee vs. Air India Ltd.**, 1997 I CLR 469, in which, while construing the provisons of Regulation 46 of the Air India Employees' (Cessation of Service) Regulations, it was held that an absolute right was conferred upon the employee to resign

from service subject to the fulfillment of the conditions stipulated therein.

9. We are of the view that it would not be necessary for this Court to enter upon any conclusive determination of the question as to whether the Petitioner must be regarded as having validly resigned from service in pursuance of the provisions of Regulation 18(1). That is because even on the premise that has been advanced on behalf of the Respondents, it is evident that the case of the Respondents is that the Petitioner's initial appointment must be regarded as void ab initio since it was procured on the basis of a caste certificate which has since been invalidated by the Competent Authority. In **R. Vishwanatha Pillai Vs. State of Kerala,** (2004) 2 SCC 105, the Supreme Court held that once it is found by the Competent Authority that a person who has secured employment on the basis of a claim to belong to a reserved category, does not belong to that category, then the very basis of his appointment is taken away, the appointment is no appointment in the eye of law and such a person cannot lay a claim to the post on the basis of his appointment. Such an appointment is void since its inception having been secured on the basis of a fraudulent

claim.

10. At the present stage, it has been stated on behalf of the Petitioner that the invalidation of the caste claim has not attained finality since an appeal which has been filed against the order of the Tahsildar is pending. Moreover, the Petitioner has made a categorical statement before the Court through her Counsel that even if her caste claim is held to be valid in appropriate proceedings by the competent forum, the Petitioner will still not seek re-employment with the First Respondent or assert any claim whatsoever against the Respondent. That being the position, on the premise which has been asserted before the Court on behalf of the Respondents, namely that the appointment of the Petitioner was obtained on the basis of a false caste certificate and is, therefore, void at the very inception, it is clear that the Petitioner cannot be called upon any further to remain in the employment of the Respondents and has to be relieved forthwith. Whether the Petitioner should be relieved in pursuance of her resignation as she asserted or on the basis that her appointment was void ab initio as is asserted by the Respondent, is thus of no material consequence to the present proceedings inasmuch as on either

hypothesis, the Petitioner would cease to be in service at the present point of time.

11. In these circumstances, it would be proper to dispose of this petition with the direction that the Petitioner is not in the employment of the First Respondent and that she stands relieved from service. The Petition is accordingly disposed of in the aforesaid terms. In the facts and circumstances of the case, there shall be no order as to costs.

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